

A large, light gray circular background contains a white line-art illustration of Lady Justice. She is depicted from the waist up, wearing a robe and a blindfold, holding a set of scales in her left hand and a sword in her right hand.

# **GUIDELINES FOR DISCIPLINARY PENALTIES AND TERMS OF PROBATION**

**[MAY 1997]**

**ISSUED BY THE**  
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## **I. INTRODUCTION**

To foster uniformity of penalties and to make sure our licensees and registrants understand the consequences of violations of the Automotive Repair Act or the Smog Check Program, the Bureau of Automotive Repair has established these guidelines. The guidelines provide a range of penalties for each section of law found to have been violated. The Bureau requests that Administrative Law Judges take into account the "Factors in Aggravation and in Mitigation" listed below, when deciding the severity of the penalty within the range.

Should a probationary period be a part of a proposed decision, the Bureau requests that the Administrative Law Judge impose the appropriate "Terms and Conditions of Probation," as outlined below. These terms and conditions are intended to protect the public from continued illegal behavior and to facilitate the rehabilitation of the probationer without being unduly burdensome or anti-competitive.

The letters A through C following each section of law or regulation refer to the Standard Terms and Conditions of Probation (A-C) to be applied for a confirmed violation of that section.

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## **II. FACTORS IN AGGRAVATION AND IN MITIGATION**

The Bureau normally submits cases for the filing of an Accusation based on investigations and the use of undercover vehicle operations in order to detect and document multiple violations of the Smog Check Program or the Automotive Repair Act.

In determining the proper penalty within the suggested ranges the following factors should be considered:

### **1. Factors in Aggravation**

- a. Prior warnings from BAR.
- b. Prior Notices of Violations.
- c. Prior Office Conference with BAR.
- d. Prior adverse Inspection Reports.

- e. Prior demonstrations of incompetence.
- f. Prior history of citations.
- g. Prior history of formal disciplinary action.
- h. Failure to permit BAR inspection of records.
- i. Abuse of mechanic's lien.
- j. Attempts to intimidate consumer.
- k. Negligent or willful improper repair work that endangers consumer.
- l. Evidence that the unlawful act was part of a pattern of practice.
- m. Failure to comply with BAR request for corrective action/retraining.
- n. Currently on probation for improper acts.
- o. Failure to successfully complete prior period of probation.
- p. Failure to pay court judgment to victim.
- q. Violation of previous court order.
- r. Any other conduct which constitutes fraud or gross negligence.

## **2. Factors in Mitigation**

- a. Evidence that respondent accepted BAR's suggested resolution to consumer complaint.
- b. Evidence of voluntary participation in retraining for self or employees.
- c. Evidence of voluntary purchase of proper diagnostic equipment and manuals.
- d. Evidence of temporary medical condition that prevented respondent from exercising supervision and control over employees or others, which led to wrongdoing.
- e. No loss to consumer and no damage to consumer's property. (Undercover cars are treated as if they were consumers.)

- f. Evidence that shop has taken specific steps for retraining and has initiated steps to minimize recurrence.
- g. Evidence of resolution of all consumer complaints with a subsequent change in business practice.
- h. Evidence of internal control or audit designed to eliminate errors.

*The absence of any new allegations or amendments to the accusation as originally filed, during the period between the filing of the accusation and the date the matter comes to hearing, in itself, shall not be regarded as evidence of mitigation.*

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### III. STANDARD TERMS AND CONDITIONS OF PROBATION

#### A. Standard Terms and Conditions "A" include the following:

##### 1. During the period of probation, respondent(s) shall:

- a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.
- b. *(Applicable only when actual suspension is ordered.)* Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.
- c. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- d. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
- e. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

- f. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.
- g. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard [*temporarily or permanently invalidate the registration*] [*suspend or revoke the license*].
- h. If the accusation involves false and misleading advertising, during the period of probation, respondent shall submit any proposed advertising copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.

**B. Standard Terms and Conditions "B" include the following:**  
***(Applicable to Technicians only)***

- 1. During the period of probation, respondent shall attend and successfully complete a Bureau certified training course in diagnosis and repair of emission systems failures and engine performance, applicable to the class of license held by the respondent. Said course shall be completed and proof of completion submitted to the Bureau within 60 days of the effective date of this decision and order. If proof of completion of the course is not furnished to the Bureau within the 60-day period, respondents' license shall be immediately suspended until such proof is received.

**C. Standard Terms and Conditions "C" include the following:**  
***(Applicable to Smog Check Stations only)***

- 1. During the period of probation, respondent shall not perform any form of smog inspection, or emission system diagnosis or repair, until respondent has purchased, installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to properly perform such work, and BAR has been given 10 days notice of the availability of the equipment for inspection by a BAR representative.
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## IV. PENALTY GUIDELINES

Accusations are filed by the Bureau only in cases it deems serious. The Bureau's emphasis is on disciplining licensees who show a pattern of abuse or willful misconduct in dealing with the public. The following guidelines were formulated for licensees who are found to have committed substantial violations. The Bureau suggests that in cases involving multiple violations, orders for suspension or other discipline run concurrently.

Because the Bureau reserves the filing of a Petition for Interim Suspension Order (ISO) for only the most egregious of cases, the only recommended penalty would be invalidation and revocation of all registrations and licenses. Therefore, in such cases the following guidelines need not be consulted.

### CODE SECTIONS

### TERMS AND CONDITIONS OF PROBATION

#### 1. Business and Professions Code

##### § 9884.7

##### (a) - False and Misleading Statements

**MIN.** – 90-day suspension  
80 days stayed  
2 years probation

A

**MAX.** – Revocation

##### (d) - Conduct Constituting Fraud

**MIN.** – Revocation, stayed  
30-day suspension  
5 years probation

A

**MAX.** – Revocation

##### (e) - Gross Negligence

**MIN.** – 90-day suspension  
80 days stayed  
2 years probation

A

**MAX.** – Revocation

**(f)** - Failure to Comply

**MIN.** – 180-day suspension  
160 days stayed  
2 years probation

**A**

**MAX.** – Revocation

**(g)** - Willful Departure

**MIN.** – 90-day suspension  
80 days stayed  
2 years probation

**A**

**MAX.** – Revocation

**(h)** - False Promises

**MIN.** – 180-day suspension  
160 days stayed  
2 years probation

**A**

**MAX.** – Revocation

**§ 9884.8** - Improper Invoice

**MIN.** – 10-day suspension  
2 years probation

**A**

**MAX.** – Revocation

**§ 9884.9** - No Written Estimate

**MIN.** – 90-day suspension  
80 days stayed  
2 years probation

**A**

**MAX.** – Revocation

**§ 9884.11** - Failure to Retain Records

**MIN.** – 90-day suspension  
80 days stayed  
2 years probation

**A**

**MAX.** – Revocation



**§ 9889.16** - Licensed Installer Required

**MIN.** - 90-day suspension  
80 days stayed  
2 years probation

**A**

**MAX.** - Revocation

**2. Health and Safety Code**

**§ 44012** - Improper Inspections

**MIN.** - Revocation of ARD & Station license, stayed  
30-day suspension of Station license  
2 years probation

**A & B**

**MAX.** - Revocation of ARD & Station License

**§ 44014** - Test and Repair Conducted by Unqualified/Unlicensed Technician/Station

**MIN.** - Revocation of ARD & Station license, stayed  
30-day suspension of Station license  
2 years probation

**A**

**MAX.** - Revocation of ARD & Station license

**§ 44014.5(b)** - Repairs Performed at a Test- Only Station

**MIN.** - Revocation of ARD & Station license, stayed  
30-day suspension of Station/Technician license  
2 years probation

**A & B**

**MAX.** - Revocation of ARD, stayed  
3 years probation  
Station license revoked

**§ 44015** - Improper Issuance of Certificates of Compliance

**MIN.** - Revocation of ARD & Station license, stayed  
30-day suspension of Station license  
2 years probation

**A & B**

**MAX.** - Revocation of ARD & Station license

**§ 44017** - Failure to Comply with Cost Limits

**MIN.** - Revocation of ARD & Station license, stayed  
30-day suspension of Station license  
2 years probation

**A & B**

**MAX.** - Revocation of ARD & Station license

**§§ 44031.5 & 44032** - Test and Repair by Non- Qualified Technician

**MIN.** - Revocation of ARD & Station license, stayed  
30-day suspension of Station license  
2 years probation

**A**

**MAX.** - Revocation of ARD & Station license

**§ 44059** - Making Any False Statement or Entry in Any Certificate of Compliance or TAS Analyzer

**MIN.** - Revocation of ARD & Station license, stayed  
30-day suspension of Station license  
2 years probation

**A & B**

**MAX.** - Revocation of ARD & Station license

**3. Cal. Code Regs., Title 16**

**§§ 3340.16 & 3340.16.5** - Station Equipment and Testing Requirements

**MIN.** - Revocation of ARD & Station license, stayed  
10-day suspension of Station license  
2 years probation

**A, B & C**

**MAX.** - Revocation of ARD & Station license, stayed  
60-day suspension of Station license  
3 years probation

**§ 3340.16.6** - Requirement for Telephone Line

**MIN.** - Revocation of ARD & Station license, stayed  
30-day suspension of Station license  
2 years probation

**A & C**

**MAX.** - Revocation of ARD, stayed  
3 years probation.  
Revocation of Station license

**§ 3340.41(a)** - Failure to Give Customer a Copy of Test Report

**MIN.** - Revocation of ARD & Station license, stayed  
10-day suspension of Station license  
2 years probation

**A & B**

**MAX.** - Revocation of ARD & Station license, stayed  
60-day suspension of Station license  
3 years probation

**§ 3340.41(b) & (c)** - Tampering with or Entering False Information into a  
Test Analyzer System (TAS)

**MIN.** - Revocation of ARD & Station license, stayed  
30-day suspension of Station license  
2 years probation

**A & B**

**MAX.** - Revocation of ARD, stayed  
3 years probation.  
Revocation of Station license

**§ 3340.41(d)** - Failing to Follow Proper Specifications and Procedures for  
Diagnosis and Repair

**MIN.** - Revocation of ARD & Station license, stayed  
30-day suspension of Station license  
2 years probation

**A, B & C**

**MAX.** - Revocation of ARD, stayed  
3 years probation.  
Revocation of Station license

**§ 3360.2** - Ball Joints

**MIN.** – 90-day suspension

**A**

**MAX.** – Revocation

**§ 3361.1** - Automatic Transmission

**MIN.** – 90-day suspension, 80 days stayed  
2 years probation

**A**

**MAX.** – Revocation

**§§ 3371 & 3372** - Misleading Advertising

**MIN.** – 180-day suspension, 160 days stayed  
2 years probation

**A**

**MAX.** – Revocation

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